

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 314/2014(D.B.)

Dnyaneshwar s/o Annaji Kirsan
Aged about 24 years, Occ : At present Nil
r/o, Kasturba Ward, Wadsa Desaiganj,
District Gadchiroli.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Additional Chief Secretary,
Home Department,
Mantralaya, Mumbai-400 032.
- 2) Additional Director General Of Police
(Administration) Maharashtra State
having its Office at Near Regal Cinema
Colaba Mumbai.
- 3) Deputy Inspector General of Police
Gadchiroli Region,
Gadchiroli Camp Nagpur.
- 4) The Superintendent of Police,
Gadchiroli.

Respondents

Shri N.D.Thombre, Ld. Counsel for the applicant.
Shri H.K.Pande, Ld. P.O. for the respondents.

**Coram:- Hon'ble Shri Shree Bhagwan, Vice-Chairman and
Hon'ble Shri M.A.Lovekar, Member (J).**

Dated: - 15th July 2022.

JUDGMENT**Per :Member (I).****Judgment is reserved on 11nd July, 2022.****Judgment is pronounced on 15th July, 2022.**

Heard Shri N.D.Thombre, learned counsel for the applicant and Shri H.K.Pande, learned P.O. for the respondents.

2. In this O.A. orders dated 21.03.2013, 21.05.2013 and 20-10/11-2013 (Annexure A-3, A-2 & A-1, respectively are impugned).

3. Chronology-

1) The applicant was appointed as a Police Constable by order dated 18.02.2011 (Annexure A-4). Clause 2 of his appointment order stated-

२) उमेदवाराचा प्रशिक्षण काळ हा ९ (नऊ) महिन्यांचा राहिल व प्रशिक्षण काळात फक्त आपातकालीन परिस्थितीमध्ये बिनपगारी रजा देय राहिल. प्रशिक्षण काळात जर त्यांची वर्तणूक गैरशिस्तीची आढळून आल्यास त्यांना सेवेतून कमी करण्यांत येईल.

2) On allegation of unauthorised absence and disorderly behaviour under the influence of liquor preliminary enquiry was directed to be held against him on 16.07.2012.

3) Report of preliminary enquiry (Annexure A-9) was submitted on 26.08.2012 to respondent no.4.

4) By order dated 25.10.2012 respondent no.4 issued a charge sheet (Annexure A-8) to the applicant and appointed Enquiry Officer (Annexure A-7).

The charge against the applicant was -

आपण पोलीस प्रशिक्षण केंद्र, सोलापुर येथुन प्रशिक्षण पूर्ण करून येत असतांना दिनांक ०७.०७.२०१२ रोजी पोलीस प्रशिक्षण केंद्र, सोलापुर येथील दिक्षांत संचालन परेड संपल्यावर दिनांक ०८.०७.२०१२ चे २३.३० वाजता हजेरी घेतली असता, हजेरीमध्ये आपण गैरहजर मिळुन आलात. तसेच दि.०९.०७.२०१२ रोजी गडचिरोली येथे येण्याकरिता रेल्वे स्टेशन सोलापुर येथे सकाळी ०७.०० वाजता हजर झालेत, तदनंतर ९२ कर्मचा-यांचे रेल्वे तिकीट काढुन १२.०० वा. चे रेल्वेनी दौंड येथे जाण्याचे आदेश दिले असता, दुपारी १२.०० ते १३.०० वाजताचे दरम्यान रेल्वेत न बसता आपण दारु पिऊन दारुचे नशेत रेल्वे स्टेशन परिसरात विनाकारण फिरतांना आढळुन आले, तेव्हा नवप्रविष्ट पोशि/३६६९ अतुल बोरकर व नवप्रविष्ट पोशि/३७१५ शिवकुमार साखरे यांनी आपणांस रेल्वेत बसविले. आपण दारुच्या नशेत धुंद असल्याने आपणास रेल्वे बोगीत बसतुन बर्थवर झोपविले असता, आपण युनिफॉर्ममध्येच लघुशंका केली व राखीव पोलीस उप-निरीक्षक, यांचेशी बाचाबाची केली. तसेच दि.१०.०७.२०१२ चे २२.३० वाजता कर्मचा-यांची हजेरी घेतली असता, आपण वरिष्ठांना कोणत्याही प्रकारची पूर्वसुचना न देता अनधिकृतपणे गैरहजर राहिले.

5) Witnesses for the department were examined on 13.12.2012, 29.12.2012 and 11.01.2013.

6) On 21.01.2013 the applicant submitted reply to the charge laid and evidence led against him (Annexure A-13).

- 7) Respondent no.4 issued a show cause notice dated 01.03.2013 (Annexure A-10) to the applicant which contained proposed punishment.
 - 8) To the show cause notice dated 01.03.2013 the applicant submitted his reply dated 06.03.2013 (Annexure A-11).
 - 9) On 21.03.2013 the disciplinary authority, respondent no.4 imposed punishment of removal from service on the applicant under Rule 3(1)(2) of the Bombay Police (Punishment & Appeal) Rules 1956 (Annexure A-3).
 - 10) By order dated 21.05.2013 (Annexure A-2) the appellate authority (respondent no.3) maintained punishment imposed by the disciplinary authority.
 - 11) On 20.10/11-2013 the revisional authority (respondent no.2) maintained order of punishment of “removal from service imposed on the applicant” (Annexure A-1).
4. Reply of respondent nos.2 to 4 is at pp.54 to 56. It is their contention –

The disciplinary authority has also given ample opportunity to the applicant for submitting his side in the departmental enquiry. The applicant is on probation, the appointment order of the applicant as per the Clauses in the appointment order the

Respondent without giving any reason can terminate the services of the applicant if the services of the applicant are not found satisfactory, but in the present case the Respondents had given opportunity to the applicant and then only passed the impugned order after satisfying that, the act of the applicant was lowering down the image of the Police Department.

5. Relevant provisions under which impugned punishment was imposed are Rule 3(1)(ii) and paragraph 4 of the explanation to Rule 3 as well as note below Rule 4 of the Bombay Police (Punishment & Appeal) Rules 1956. These provisions are as under-

3. (1) Without prejudice to the provisions of any law for the time being in force, the following punishments may be imposed upon any Police Officer, namely :-

(a-1) ()***

(a-2) suspension;

(i) ***

(i-a) ***

(ii) removal from service which does not disqualify from future employment in any Department other than the Police Department;

(iii) ***

(2) ***

(1) ***

(2) * * *

[(3) * * *

(4) the discharge of a probationer, whether during or at the end of the period of probation, for some specific fault or on account of his unsuitability for the service amounts to removal.]

4. [(1) * * *

[(2) * * *

Provided that * * *

Note.- The full procedure prescribed for holding departmental enquiry before passing an order of removal need not be followed in the case of a probationer discharged in the circumstances described in paragraph (4) of the Explanation to rule 3. In such cases, it will be sufficient if the probationer is given an opportunity to show cause in writing against his discharge after being apprised of the grounds on which it is proposed to discharge him and his reply (if any) is duly considered before orders are passed.

6. We have set out chronology and the procedure as per which a probationer could be removed from Police service. This chronology clearly demonstrates that in the instant case the procedure which is laid down for removing a probationer from service was followed.

We have quoted relevant portion of reply of respondents 2 to 4. The

contentions of respondents 2 to 4 are fully borne out by record. In view of record of the case, submission made on behalf of the applicant that while holding the enquiry procedural lapses were committed cannot be sustained.

7. It was further submitted by Shri. N.D.Thombre, learned Advocate for the applicant that by no stretch of imagination punishment imposed on the applicant can be said to be commensurate with proven delinquency of the applicant. In support of this submission reliance is placed on following rulings.

1) *B.C. Chaturvedi, v. Union of India and Others AIR 1996 Supreme Court 484.*

2) *Bhagat Ram vs. State of Himachal Pradesh And Others(1983) 2 Supreme Court Cases 442.*

3) *Chairman-cum-Managing Director, Coal India Limited & Another Vs. Mukul Kumar Choudhari & others- 2009 III CLR 645.*

4) *Ranjit Thakur vr. Union of India AIR 1987 Supreme Court 2386*

5) *Bhagirath Singh (Ex.Const. Driver) Vs. Union of India 2005 III CLR 466*

In the aforementioned ruling at Sr.No.1 it is held –

A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

These observations reiterate limited scope of judicial review and further lay down that the punishment can be appropriately scaled down only if it shocks the conscience of the Court / Tribunal.

We have held that there were no procedural lapses committed with regard to the Departmental Enquiry. The punishment was imposed on the basis of evidence on record. Hence, now the only

question that remains to be considered is whether the punishment was highly disproportionate having regard to proven facts of the case.

The applicant has placed on record circular dated 31.10.1991 issued by Home Department of Government of Maharashtra. This Circular envisages various contingencies and prescribes punishment. It does not specifically lay down the punishment that can be imposed on a probationer. Admittedly, at the relevant point of time the applicant was on probation. Considering these facts the Disciplinary Authority was justified in imposing punishment of removal from service which is provided under Rule 3(1)(ii) of the Bombay Police (Punishment & Appeals) Rules 1956. It may be observed that said removal from service did not disqualify the applicant from future employment in any department other than the Police department. Under the circumstances said punishment cannot be held to be disproportionate.

8. For the reasons discussed hereinabove the application deserves to be, and the same is hereby, dismissed with no order as to costs.

(M.A.Lovekar)
Member (J)
Dated – 1

(Shree Bhagwan)
Vice Chairman

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Raksha Shashikant Mankawde
Court Name : Court of Hon'ble Vice Chairman &
Court of Hon'ble Member (J) .
Judgment signed on : 15/07/2022.
and pronounced on
Uploaded on : 15/07/2022.